81-1040

No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

FELIX S. JACOB,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FELIX S. JACOB,
Suite 200,
One North Charles Street,
Baltimore, Maryland 21201,
In Proper Person.

The Daily Record Co., Baltimore, MD 21202

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals was wrong in not finding this to be a general warrant in light of *Andresen v. Maryland*, 427 U.S. 463 (1976), and *United States v. Burch*, 432 F. Supp. 961 (D. Del. 1977), *aff'd without opinion*, 577 F.2d 729 (3rd Cir. 1978).

2. Whether the government had a right to appeal to the Fourth Circuit, Jacob's consent notwithstanding, since jeopardy had attached at the lower court hearing before Judge Miller as a government witness had testified and the suppression motion was the whole case, thus, subjecting Jacob to double jeopardy, maybe even quadruple jeopardy, in violation of the Fifth Amendment to the United States Constitution. *United States v. Scott*, 98 S. Ct. 2187 (1978).

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No.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered August 10, 1981, and denial of a timely petition for rehearing entered in this proceeding on October 5, 1981.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit and the denial of petition for rehearing (No. 81-5049) are appended hereto (Appendix 2a).

JURISDICTION

The judgment of the Court below (App. 2a) was entered on August 10, 1981. A timely petition for rehearing was denied on October 5, 1981 (App. 3a). The jurisdiction of this Court is invoked under 28 U.S.C.A. 1254(1).

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the Constitution of the United States provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment to the Constitution of the United States provides: "No person shall be deprived of life, liberty or property without due process of law."

STATUTES INVOLVED

26 U.S.C. § 7206(1) FRAUD AND FALSE STATEMENTS

Any person who—

(1) Declaration under penalties of perjury

"Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or"

18 U.S.C. § 1341 FRAUDS AND SWINDLES

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

STATEMENT OF FACTS

In April 26, 1979, Felix S. Jacob was a practicing attorney in Baltimore, Maryland, who had been a member of the Maryland Bar since his graduation from Harvard Law School in 1955, was licensed to practice before the Court of Appeals of Maryland and the Supreme Court of the United States, and had a good rating from Martindale-Hubbard and had never any charge more serious then a speeding ticket. On that evening his office was subject to a raid by seven government agents, with a gun, for over seven hours, based on a warrant that mentioned dealings with Dr. Gluck and payoffs to three insurance adjusters for mail fraud in violation of 18 U.S.C. § 1341. The facts were that Jacob had only had minimum contacts with Dr. Gluck and terminated the relationship in early 1973, there being a five year statute of limitation for mail fraud. In fact, not one penny had been paid to three insurance adjusters and

Jacob had never even seen Dr. Gluck and had instructed everyone in his law offices to break off with him in early 1973.

Jacob subsequently signed an agreement with the government that he would be guilty of one count of making a false statement on a 1975 tax return, in violation of 26 U.S.C. § 7206(1), if the warrant and the search and seizure were deemed to be valid. Jacob gave up other defenses as regarding materiality and sanity. The amount of income tax involved is about $1,000.00. On the other hand, the government has agreed that if the search and seizure of April 26, 1979, is not valid and that all evidence derived from the said search and seizure is not admissible, then Jacob should be acquitted on the charges before this Court.

Under the warrant, the executing officers were authorized to search for and seize:

> ledgers, etc., which show or tend to show evidence of violation of federal criminal law including, *but not limited to,* mail fraud in violation of 18 U.S.C. § 1341 (Emphasis added)

Acting upon the Defendant's motion, the District Court ordered the suppression of all evidence obtained during the April 26, 1979, search. *United States v. Jacob,* 502 F. Supp. 1221 (D. Md. 1980). The basis of the suppression order was the Court's conclusion that the warrant was impermissibly general since, "on its fact, * * * (it) proposed to authorized the search for evidence of any federal crimes as long as the evidence 'relates' to the persons or transactions identified in the warrant," *Id.,* at 1220. Judge Miller noted, initially, that the underlying affidavit, while relevant to the issue of whether probable cause to search existed, cannot be used to cure the deficiencies, if any, in the instant warrant. It is undisputed here that the affidavit was not served with the warrant, and was not available for the use of the executing officer during the

search. Therefore, the Court may not consider the information contained in the affidavit in determining whether the warrant was sufficiently specific. Judge Miller further notes that without a description of the crime or crimes alleged to be involved, there can be no meaningful review of the magistrate's probable cause determination, and the executing officers are left to decide for themselves what may be seized. The Court held on November 28, 1980, that the warrant authorizing the April 26, 1979, search of Defendant's law office was a general warrant, and thus violates the Fourth Amendment and, as such, all fruits of the search must be suppressed.

The United States Court of Appeals for the Fourth Circuit reversed and remanded the case in order that the District Court may consider and determine the issue of the scope of the search.

REASONS FOR GRANTING CERTIORARI

I.

THE *JACOB* DECISION IN THE FOURTH CIRCUIT IS IN CONFLICT WITH THE *BURCH* DECISION IN THE THIRD CIRCUIT REGARDING GENERAL SEARCH WARRANTS.

As Judge Miller points out on page 5, both the Defendant and the government rely on the Supreme Court's opinion in *Andresen v. Maryland*, 427 U.S. 463 (1976). In that case the relevant warrant language was as follows:

> *"Together with other fruits, instrumentalities and evidence of crime at this (time) unknown."* 427 U.S. 480-81 n.10 (Emphasis supplied).

The Defendant in *Andresen* contended that the warrant was rendered "general" by the addition of the above highlighted language because it permitted the search for and seizure of evidence of any crime. In properly rejecting this argument, the Court states that such language had to

be used in conjunction with what preceeded it, and that when so used "the term 'crime' in the warrant refer (ed) only to the crime of false pretense with respect to the sale of Lot 13 T," 427 U.S. at 480-81 (Emphasis supplied).

In the Jacob warrant the executing officers were authorized to examine for evidence of "violation of federal criminal law including, *but not limited to,* mail fraud in violation of 18 U.S.C. § 3141." Paper No. 4, Ex. D. (Emphasis supplied). Thus, the element of specificality as to crimes that were deemed essential in *Andresen* is missing from the warrant at issue in Jacob.

In *United States v. Burch,* 432 F. Supp. 963 (D. Del. 1977), *aff'd without opinion,* 577 F.2d 729 (3rd Cir. 1978), the Court held that a warrant which authorized search of van and Defendant's garage for "automobile tires and a green 1975 Dodge van . . . and other *UNKNOW ARTICLES* (Emphasis supplied) which are believed and reported to be stolen from Penn Central Railroad" was a general warrant repugnant to the Fourth Amendment, since the warrant was not limited to a search for evidences or fruits or any particular crimes but rather, on its face, permitted a search for anything that could have been stolen at any time from Penn Central.

On page 963, the Court stated:

> "Implicit is the Supreme Court's holding was the recognition that, by limiting the search to evidence of a single crime, the warrant gave executing officers a means to distinguish among Andresen's files and documents and to identify those they were authorized to seize. The warrant under consideration here differs in this critical respect: it was not limited to a search for evidence or fruits of any particular crime or crimes. On its face, this warrant permitted a search for anything which could have been stolen at any time from Penn Central in Wilmington. Because of the wide array of goods that are shipped by rail and

which, thus, might fall into this category, the F.B.I. agents might reasonably have concluded that the warrant authorized them to seize virtually anything. The warrant imposed no effective limit on the scope of the search."

II.

AS OF OCTOBER 17, 1981, JACOB HAS FOUND 49 CIRCUIT CASES WHICH HAVE CITED *ANDRESEN*, THUS NECESSITATING A CLARIFICATION.

This huge volume of cases which have gone to the Circuit level since 1976 show a compelling reason for the Court to accept this writ in order to clarify its prior decision and give a clear mandate to all courts.

CONCLUSION

Shakespeare has said: "THE FIRST THING WE DO, WE KILL ALL THE LAWYERS."

Petitioner asks this Court to accept this Writ to further clarify *Andresen* and avoid any appearance of not being a Democratic Society, but being a police state as predicted in the novel "1984" and subjecting Jacob to quadruple jeopardy. When Jacob was in his second year at Harvard Law School in 1953-1954, he took a course in comparison of Soviet and American Law and received a B. Never did he dream that his law office would be subject to a Kremlin type raid by seven agents, armed with a gun, looking for any "evidence of violation of Federal Criminal Law."

Respectfully submitted,

FELIX S. JACOB,
Suite 200,
One North Charles Street,
Baltimore, Maryland 21201,
In Proper Person.

APPENDIX A

Order of the United States District Court for the District of Maryland

Accordingly, it is this 28th day of November, 1980, by the United States District Court for the District of Maryland, ORDERED:

1. Defendant's motion to suppress is GRANTED.

2. The Clerk is instructed to forward a copy of this Memorandum and Order to counsel for the parties.

/s/ James R. Miller, Jr.,
United States District Judge.

APPENDIX B

United States Court of Appeals
for the Fourth Circuit

No. 81-5049

United States of America,

Appellant,

versus

Felix S. Jacob,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore, James R. Miller, Jr., Judge.

Argued May 4, 1981

Decided August 10, 1981

Before Field, Senior Circuit Judge; Murnaghan, Circuit Judge; and Erwin, District Judge.

Accordingly, the case will be remanded in order that the District Court may consider and determine the issue of the scope of the search. The suppression order is reversed and the case is remanded for further proceedings.

REVERSED AND
REMANDED

APPENDIX C

United States Court of Appeals
for the Fourth Circuit

No. 81-5049

United States of America,

Appellant,

versus

Felix S. Jacob,

Appellee.

ORDER

(Filed October 5, 1981)

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Field for a panel consisting of Judge Winter, Judge Field, and Judge Erwin (U.S.D.J.).

FOR THE COURT,

/s/ WILLIAM K. SLATE, II,
Clerk.